No. 3123

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHRIS BETSCH and JOE L. JEAN,

Appellants,

vs.

FRED UMPHREY and FRED HARRISON,

Appellees.

Reply Brief for Appellants

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Argument

Appellees in their brief take the position that because the pleadings show that the Delbar affidavit was not filed until the 94th day of the year, that for that reason the trial court was justified in giving them a judgment on the pleadings.

Section 7 of Chapter 10 of the Session Laws of Alaska for 1915, after providing for the filing of the affidavit for assessment work within 90 days after the close of the calendar year, further states:

> "Provided, however, that a compliance with the provisions of this section before any relocation shall operate to save the rights of the original locator."

Under the foregoing proviso the original locator could file the proof of labor for the performance of the annual assessment work of the preceding year at any time on the 94th, 95th, 100th or 200th day of the year after such work was done before a valid relocation of the placer ground had been made. In other words the original locator still retains the ownership, title and possession to the ground until a valid relocation is made. The appellants in their answer in the court below denied that the appellees made any valid location by the discovery or marking or otherwise of the ground in controversy. This was an issue that could only have been tried by the court at a proper trial.

Section 895, Compiled Laws of Alaska, provides:

> "The answer of the defendant shall contain—
>
> First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or any knowledge or information thereof sufficient to form a belief.
>
> Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without a repetition."

In the case at bar the answer of the defendants constituted, first, a general denial of the allegations of the complaint, and, second, an affirmative defense that the defendants were the owners in fee of the ground in controversy and in the possession and

entitled to possession of the same. No plainer, better or more concise statement could be made of the fact that the defendants were claiming the ground under a fee title and not a life estate or leasehold estate in the property, and that they were in possession of the ground, contesting possession and title to all of it with the plaintiffs.

This same question arose in an Alaskan case over a dispute for the recovery of real property and the identical question was decided by this court on appeal. See the case of *McGrath vs. Vallentine,* 167 Fed. 473, wherein the court says:

> "In an action in ejectment where the answer not only denied title of plaintiff, but as to certain of the property alleged title in defendant, it was error to render judgment for plaintiff on the pleadings."

The appellants in their answer not only denied that the appellees made any location whatever of the ground in controversy but denied that the plaintiffs were in possession at the time their suit was instituted and appellants further allege affirmatively that they are the owners in fee of the ground in controversy and in possession of the same. Such an answer is all that the Alaska Code requires. It puts the plaintiffs in the suit on notice that the defendants are claiming the ground in controversy under a fee title as against everybody except the government and certainly precludes them from recovering a judgment for the ground in contro-

versy without first having at a proper trial established the allegations of their complaint.

Respectfully submitted,

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